

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST )	
FOR REVIEW BY: )	CHARGE NO.: 2009CA2671
)	EEOC NO.: 21BA91320
<b>BEAUTY B. FINLEY</b> )	ALS NO.: 10-0137
)	
Petitioner. )	

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners Sakhawat Hussain, M.D., Spencer Leak, Sr., and Diane M. Viverito presiding, upon Beauty B. Finley's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")<sup>[1]</sup> of Charge No. 2009CA2671; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, **THEREFORE**, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

**LACK OF SUBSTANTIAL EVIDENCE**

In support of which determination the Commission states the following:

1. On February 26, 2009, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged that Ozburn-Hessey Logistics ("Employer") discharged her on September 2, 2008, because of her race, Black (Count A), her age, 58 (Count B), and sex, female (Count C); and denied her a severance package on September 2, 2008, because of her race (Count D), age (Count E) and sex (Count F), in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). On February 1, 2010, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On February 18, 2010, the Petitioner filed this timely Request.
2. The Petitioner worked as a Custodian for the Employer.
3. On September 2, 2008, the Employer laid off five (5) employees, including the Petitioner, who worked the weekend shift. The other four (4) employees the Employer laid off were all non-Black males, and they were all younger than the Petitioner.

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<sup>[1]</sup> In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge who is requesting review of the Department's action shall be referred to as the "Petitioner."

4. When the Employer laid off the aforementioned employees, the Employer required each employee to sign a Severance Agreement. The four younger, non-Black male employees signed the Severance Agreement.
5. The Petitioner did not sign the Severance Agreement.
6. The Employer stated that it eliminated its entire weekend shift, including the Petitioner, because it experienced a reduction in business. The Employer stated the Petitioner did not receive a severance package because she refused to sign the Severance Agreement.
7. In her charge, the Petitioner alleged she was discharged and denied a severance package because of her race, age, and sex.
8. In her Request, the Petitioner argues that she was a victim of discrimination and that she was discharged in retaliation for being named as a witness in a claim against the Employer.
9. In its Response, the Respondent requests that the Commission sustain the dismissal of the Petitioner's charge for lack of substantial evidence.

### **Conclusion**

The Commission concludes the Respondent properly dismissed the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258, \*2 (March 7, 1995).

The Commission finds there is no evidence to substantiate the Petitioner's claim that she was subjected to discriminatory treatment. As to Counts A, B, and C, wherein the Petitioner alleged unlawful discharge, her claims of race, age, and sex discrimination all fail because the Petitioner and four other younger non-Black male employees who worked on the second-shift were all laid off by the Employer on the same day. Thus, there is no evidence the Petitioner was treated less favorably than similarly situated employees outside of her protected classes.

As to Counts D, E, and F, wherein the Petitioner alleged she was denied a severance package because of her race, age, and sex, these allegations are not supported by the evidence. The Petitioner admits she refused to sign the Employer's Severance Agreement. There is no evidence that younger, non-Black, male employees who refused to sign the Employer's Severance Agreement

received a severance package from the Employer. By refusing to sign the Employer's Severance Agreement, the Petitioner waived her right to receive a severance package.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show the Respondent's dismissal of her charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

**WHEREFORE, IT IS HEREBY ORDERED THAT:**

The dismissal of the Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Ozburn-Hessey Logistics, as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

**STATE OF ILLINOIS**

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**HUMAN RIGHTS COMMISSION**

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**Entered this 22<sup>nd</sup> day of September 2010**

Commissioner Sakhawat Hussain, M.D.

Commissioner Spencer Leak, Sr.

Commissioner Diane M. Viverito